IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WA.No. 1379 of 2007()

AGAINST THE JUDGEMENT DATED 08/11/2006 IN O.P.NO.20037 OF 2002

APPELLANT: PETITIONER

M/S.ASIANET SATELLITE COMMUNICATIONS (P) LTD.,
3RD FLOOR,KARIMPANAL ARCADE, EAST FORT,
THIRUVANANTHAPURAM-695 023, REPRESENTED BY
RAJKUMAR.C.,COMPANY SECRETARY.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS: RESPONDENTS
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1. THE ADDITIONAL SALES TAX OFFICER-1,
IST CIRCLE,PEROORKADA,THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T. SANKARAN,J.

W.A. NO. 1379 OF 2007

Dated this the 12th July, 2007

JUDGMENT

H.L.DATTU, C.J.

The orders of penalty passed for the assessment years 1993-94 to 1996-97 under the provisions of the Central Sales Tax Act, 1956 by the assessing authority against the petitioner was the subject matter of the Writ Petition. The learned Single Judge has rejected the writ petition. Questioning the correctness or otherwise of the said order is the subject matter of this Writ Appeal.

2. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act (for short 'KGST Act') and also the Central Sales Tax Act, 1956 (for short 'the Act'). The activity of the assessee is the distribution of TV signals.

3. For its business activity, the assessee had approached the authority under the KGST Act for grant of registration certificate as required under Section 7 of the C.S.T. Act read with Rule 3(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. While making the application, it was the specific request of the assessee, that, he would intend to effect interstate purchase of Dish Antenna, Channel processor, Line Amplifier, TV and Satellite Monitor Level Meter, TV/FM and Satellite Level Meter, Equalizer, etc. for the purpose of resale.

4. At this stage, it may be relevant to notice the application filed by the assessee before the authority for registration as envisaged under Section 7 of the Act. In column 16 of the application, the assessee has specifically stated that he intends to purchase the goods in the course of interstate trade or commerce for the

purpose of "resale".

5. Keeping in view the request made by the assessee in the application filed, the registering authority while granting the registration certificate, dated 28th May, 1993, has permitted the assessee to effect interstate purchase of nearly 42 items of machinery for the purpose of 'resale' alone. That can be inferred from the certificate of registration that is produced by the learned counsel for the assessee at the time of hearing of this appeal. In terms of clause (b) of sub-section (3) of Section 8, the benefit of concessional rate of tax under sub-section (1) for sales to registered dealers will be available only for the goods specified in the certificate of registration of those dealers.

6. The assessing authority, being of the view that the assessee-dealer company after purchasing the goods for the purpose specified in sub-section (3) of Section 8 as per the registration certificate has failed to make use of the goods for the declared purpose and thereby has violated provisions of Section 10(d) of the Act has imposed penalty under Section 10A of the Act for the assessment years 1993-94 to 1996-97, after issuing a show cause notice to the assessee and after considering the objections filed by the dealer in this regard.

7. Aggrieved by that order, the assessee had carried the matter by way of revision before the Commissioner of Commercial Taxes. The said authority, after considering the plea of the assessee, has come to the conclusion that the assessing authority is justified in levying penalty under Section 10A of the Act.

8. Aggrieved by those orders, the assessee was before this Court in O.P.No.20037 of 2002. This Court by its order dated 8th November, 2006, has partly allowed the Original Petition and has reduced the penalty imposed by the assessing authority for the assessment years 1993-94 to 1996-97. Correctness or

otherwise of the said order is the subject matter of the present appeal.

9. Dr. K.B. Mohamedkutty, learned counsel appearing for the assessee would submit that the activity of the assessee is "distribution of TV signals" and that can be included within the meaning of the expression “distribution of the other form of power” and, therefore, the assessing authority, in view of Section 8(3)(b) of the Act, could not have levied any penalty. Apart from this, learned counsel would submit that before passing an order for levying penalty, the authority ought to have considered the explanation offerred by the assessee and should have also given a finding with regard to 'guilty mind' of the assessee for imposing penalty under Section 10-A of the Act and since that has not been done, the learned single Judge was not justified in sustaining the order passed by the authorities under the Act. In support of that contention, the learned counsel has invited our attention to the several decisions of the various courts.

10. Section 6 of the Act is the charging provision under this Act. It provides for levy of tax on all sales of goods in the course of inter-State trade or commerce. Section 8 of the Act prescribes the rates of tax on sales in the course of inter-State trade or commerce. Under this section, every dealer who in the course of inter-State trade or commerce sells any goods to the Government or sells to registered dealers other than Government, the Goods of description referred to in sub-section (3) of Section 8 is liable to pay tax at the rates prescribed and made applicable to different types of such transactions. The Goods referred to in clause (b) of sub-section (1) of Section 8 of the Act, are the goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale or for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of

electricity or any other form of power. That only means, the benefit of the concessional rate of tax under sub-section (1) of Section 8 for sales to a registered dealer will be available only for the goods specified in the certificate of registration of those dealers.

11. Section 10 of the Act provides for levying of penalties. There are several sub-sections under this section. For our purpose, Section 10(d) of the Act is relevant and therefore, the same is extracted and it reads as under:

> "S.10(d): After purchasing any goods for any of the purposes specified in clause (b) or clause (c) or clause (d) of sub-section (3) or sub-section (6) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purpose."

12. Section 10(d) of the Act speaks of offences that if the purchasing dealer after purchasing any goods specified in clauses (b), (c) and (d) of sub-section (3) of Section 8 or sub-section (6) of Section 8 fails, without reasonable excuse, makes use of the goods for such other purpose, the offence under this section is attracted. In order to have the concessional rate of tax under section 8(1) (b) applied to an inter-State sale, the purchasing dealer has to give a declaration to the selling dealer containing the prescribed particulars in a prescribed form obtained from the prescribed authority certifying intention that the goods are intended for re-sale by him; for use by him in the manufacture or processing of goods for sale; or in mining or in the generation or distribution of electricity or any other form of power etc. if the purchasing dealer, thereafter, without reasonable excuse, uses any such goods for the purpose other than and contrary to the declared purpose, the provisions of Sec.10(d) is attracted. The use of the words "without reasonable excuse" in this clause implies that blameworthy conduct is necessary ingredient for the offence under Section 10(d)

of the Act.

13. Section 10A of the Act provides for imposition of penalties in lieu of prosecution. The said section is also relevant for the purpose of the disposal of this Writ Appeal. Therefore, the said section is extracted and the same reads as under:

> "**10A. Imposition of penalty in lieu of prosecution**:- (1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of Section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act, may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under sub-section (2) of Section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section.
>
> Provided that no prosecution for an offence under Section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this Section.
>
> (2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of Section 9 --
>
> (a) in the case of an offence falling under clause (b) or clause (d) of Section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of clause (a) of sub-section (4) of Section 8 in connection with the purchase of such goods;
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> (b) in the case of an offence falling under clause (c) of Section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed."

14. This section authorises the assessing authorities or the other competent authorities to levy penalty in lieu of prosecution in respect of an offence under clause (b) or clause (c) or clause (d) of Section 10 in a sum not exceeding one and a half times the tax which would have been levied under sub-section (2) of Section 8 in respect of the sale to him of the goods, if the sale had been a sale

falling within that sub-section. This section requires a reasonable opportunity being given to a dealer before the penalty is imposed.

15. In the instant case, the assessee is doing business in the distribution of TV signals. It had gone before the competent authority, with a request to grant the certificate of registration for the purpose of purchase of certain items of goods for the purpose of resale. Considering the request so made, the assessing authority had granted the certificate of registration. The Registering Authority has specified that the goods that the assessee can purchase in the course of interstate trade or commerce are specifically meant for the purpose of 'resale'. It is not the case of the assessee before this Court or before the Commissioner of Commercial Taxes that after purchase of goods in the course of interstate trade or commerce and after issuing 'C' Forms, the assessee has effected resale of such goods. According to the assessee, though the certificate of registration that was issued was only for the purpose of purchase of goods in the course of interstate trade or commerce for resale, the assessee has used it for his business purpose, namely, for distribution of TV signals. In our view, for the purpose of deciding this appeal, we need not go into the issue whether the business in transmitting T.V. signals is either distribution of electricity or any other form of power, since in the registration certificate issued, the registering authority had specifically authorised the dealer to effect inter State purchase of certain items which may be used for the purpose of distribution of T.V. signals by issuing 'C' forms only for the purpose of re-sale. It is an admitted fact even by the dealer that though inter State purchases were made by issuing the 'C' forms, they have used it for the purpose of distribution of T.V. signals and not effected any re-sale.

16. The next question that would arise is, whether the provisions of Section

10(d) of the Act would attract in a case of this nature. Before we answer this issue, it would be appropriate to notice the view of the Assessing Authority. In his order, he has observed as under:

> "In this connection, I am to state that 'mens rea' is a concept of criminal law which enables the court to scrutinise what had passed in the mind of an accused person during the commission of an offence, so as to find him guilty or not guilty. But when 'mens rea' is a relatable tax delinquency which is a civil obligation, it implies a blameworthy conduct. The recording of a finding that the assessee had made a false representation by itself shows the establishment of the 'blameworthy conduct', which would be the establishment of 'mens rea' to the limited extent applicable to civil obligation. There are numerous decisions to illustrate the fact that as far as imposition of penalty under section 10(d) is concerned, no 'mens rea' is required.".

17. Section 10(d) makes it clear that if a person after purchasing the goods in the course of interstate trade or commerce for any of the purposes specified in clauses (b), (c) or (d) and fails to make use of the said goods without any reasonable cause, then penalty under Section 10 would be attracted and the same can be compounded under Section 10A of the Act in lieu of prosecution.

18. In the instant case, as we have already noticed, the purchase effected by the assessee was for the purpose of resale, but what was done by him is using the same for his business purpose, namely, for distribution of TV signals. It was not the case of the assessee before the assessing authority that while making the application for registration under the Act, he had specifically stated that he intends to use the goods for the purpose of distribution but a mistake has crept in the Certificate of Registration, and it was not its case also that, it believed honestly that with the certificate granted by the assessing authority, it could effect inter-State

purchase by issuing 'C' forms fir its own use. The assessee in the present case was fully aware of the goods that were specified in the Certificate of Registration and the purpose for which those goods could be used, in spite of it, used the goods purchased without effecting the resale for which purpose the certificate of registration was granted. Though the assessing authority has stated that mens rea is not necessary in cases of this nature, which assumption is not correct for the purpose of Section 10(d) of the Act, keeping in view the huge liability involved, we have carefully analysed the objections filed by the assessee before the assessing authority and we are of the opinion that cause shown by the assessee for misuse of 'C' forms is not worthy of acceptance and therefore we hold that there is blameworthy conduct of the assessee and therefore, the penalty imposed by the assessing authority is wholly justified and the same requires to be sustained. Therefore, we do not see any error in the judgment delivered by the learned single Judge. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.